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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,268	07/22/2003	Mark J. Summer	13879	7489

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EXAMINER

MIGGINS, MICHAEL C

ART UNIT PAPER NUMBER

1772

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/624,268	<b>Applicant(s)</b> SUMMER, MARK J.	
	<b>Examiner</b> Michael C. Miggins	<b>Art Unit</b> 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

#### **REJECTIONS WITHDRAWN**

1. All of the 103(a) rejections for claims 12-19 set forth in the non-final rejection of 5/31/06, pages 3-5, paragraph 5 have been withdrawn.

#### **REJECTIONS REPEATED**

2. All of the 103(a) rejections for claims 1-11 and 20-21 set forth in the non-final rejection of 5/31/06, pages 2-6, paragraphs 3-6 are repeated for the reasons of record.

Applicant has added to claims 1 and 20 that the cylindrical barrel and that the injection site is on a cylindrical surface. Robinson discloses a cylindrical barrel (Figs. 3-5). Robinson does disclose that the injection site is disposed on a flat surface (44 from Fig. 5). However, a change in shape is obvious and within the level of one of ordinary skill in the art (MPEP 2144). It would have been obvious to have provided the injection site on a cylindrical surface in order to provide lower costs since the addition of a separate flat portion raises cost and difficulty of manufacture.

#### **NEW REJECTIONS**

##### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson (US 6494866) in view of Raitto (US 4363329) and Nedbal (US 5180643).

Claim 12 recites an intended use ("for a hydrometer of a storage battery") and has been given little too no patentable weight since it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Robinson discloses a molded plastic rod comprising a barrel formed by an injection molding process (column 3, lines 10-15 and column 2, lines 35-52) along the length thereof (column 3, lines 10-37 and Fig. 6), an injection stress relieving formation (42 from Fig. 3, column 2, line 60 through column 3, lines 1-9, since the thread portions protect the gate vestige 45) in said barrel adjacent said injection site (45 from Fig. 3, column 2, line 60 through column 3, lines 1-9), including first and second injection stress relieving formations on opposite sides of said injection site (42 from Fig. 3, since the threads are separated by flat portion 44), said first and second injection stress relieving formations being outward projections from the surface of said barrel (42 from Fig. 3), said first and second elongated stress-relieving projections having tapered ends (42 from Fig. 3, since the threads are tapered into flat region 44) (applies to instant claims 12-14 and 16). The threading (42 from Fig. 3) is necessarily a stress relieving formation for gate vestige injection site (45 from Fig. 3) because it surrounds and protects the gate vestige injection site and it would have been obvious to have provided a stress relieving formation in order to prevent cracking or breaking of the barrel.

Robinson does not specifically disclose a light transmissive barrel of acrylic.

Raitto discloses a barrel which is light transmissive and is of acrylic (column 5, lines 17-47) (applies to instant claims 9-12) for the purpose of reducing cost and/or improved transparency.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a barrel which is light transmissive and is of acrylic in the invention of Robinson in order to provide reduced costs and/or improved transparency.

With regard to claims 15, 17-19 which recite different shapes and dimensions for the stress relieving formations, it has been found that a change in shape is obvious and well within the level of one of ordinary skill in the art (MPEP 2144). It would have been obvious to one of ordinary skill in the art to have provided the recited shapes and dimensions in order to provide an easier method through the use of less material, a snap on type cap (24, Robinson), or to further protect the gate vestige (45 from Fig. 5, Robinson).

Robinson fails to disclose a solid barrel having a cone shaped tip at one end thereof and an indicating surface at an opposite end thereof.

Nedbal discloses a solid barrel having a cone shaped tip at one end thereof and an indicating surface at an opposite end thereof (Fig. 1 and column 4, lines 47-59) for the purpose of measuring the level and density of an electrolytic fluid.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a solid barrel having a cone shaped tip

at one end thereof and an indicating surface at an opposite end thereof in the invention of Robinson in order to measure the level and density of an electrolytic fluid.

### **ANSWERS TO APPLICANT'S ARGUMENTS**

5. Applicant's arguments filed 7/24/06 have been carefully considered but are deemed unpersuasive.

Applicant has argued that Robinson does not disclose that the injection site is on a cylindrical surface. However, a change in shape is obvious and within the level of one of ordinary skill in the art (MPEP 2144). It would have been obvious to have provided the injection site on a cylindrical surface in order to provide lower costs since the addition of a separate flat portion raises cost and difficulty of manufacture.

Applicant has argued that Robinson does not disclose a solid barrel having a cone shaped tip at one end thereof and an indicating surface at an opposite end thereof. However, Nedbal discloses a solid barrel having a cone shaped tip at one end thereof and an indicating surface at an opposite end thereof (Fig. 1 and column 4, lines 47-59) as discussed above.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael C. Miggins

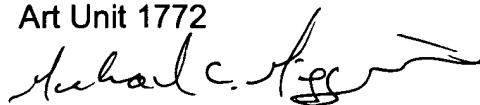
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Primary Examiner

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A handwritten signature in black ink, appearing to read "Michael C. Heger", with a stylized flourish at the end.

MCM

October 2, 2006